



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 5, 2005

Ms. Ruth H. Soucy  
Manager and Legal Counsel  
Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2005-03919

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 223505.

The Comptroller of Public Accounts (the "comptroller") received a request for (1) the names of the corporations that are owed tax refunds of \$50,000 or more, and (2) the list that was released by the comptroller pursuant to a prior ruling issued by this office. You state that you have provided the requestor with the information requested in the second portion of the request. You claim, however, that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 111.006(a)(2) of the Tax Code provides that information "secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer's books, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer" is confidential. Tax Code § 111.006(a)(2).

The supreme court considered the applicability of section 111.006 to several categories of information in *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995). In doing so, the court not only considered if the information was derived from the taxpayer's records, but also whether the information reveals anything about the taxpayer's business affairs, operations, financial condition, profits, or losses. *Id.* at 676, 680. The court concluded that while the amounts of deficiencies or refunds are derived from the taxpayer's records, the fact of a deficiency or refund "reveals nothing about taxpayers except that they miscalculated their tax." *Id.* at 680; *see id.* at 680 n. 6. Thus, the fact of a deficiency or refund is not confidential under section 111.006.

Based on *A & T Consultants*, only information that is obtained from the taxpayer and reveals the taxpayer's business affairs, operations, financial condition, profits, or losses is confidential under section 111.006. In this instance, the requestor only seeks information concerning taxpayers receiving refunds greater than \$50,000. Because a list limited to tax refunds greater than \$50,000 encompasses such a large range of refund amounts, we find that the submitted information does not reveal refund amounts derived from the records of any taxpayer. Furthermore, we find that the submitted information does not reveal any taxpayer's business affairs, operations, financial condition, profits, or losses. Consequently, the submitted information is not confidential under section 111.006(a)(2) of the Tax Code, and it may not be withheld under section 552.101 of the Government Code on that basis.

You also claim the submitted information is confidential under section 552.101 of the Government Code in conjunction with section 151.027 of the Tax Code. Section 151.027 provides for the confidentiality of information collected under the Limited Sales, Excise, and Use Tax Act and provides in relevant part as follows:

(a) Information in or derived from a record, report, or other instrument required to be furnished under [chapter 151 of the Tax Code] is confidential and not open to public inspection, except for information set forth in a lien filed under this title or a permit issued under this chapter to a seller and except as provided by Subsection (c) of this section.

(b) Information secured, derived, or obtained during the course of an examination of a taxpayer's books, records, papers, officers or employees, including the business affairs, operations, profits, losses, and expenditures of the taxpayer, is confidential and not open to public inspection except as provided by Subsection (c) of this section.

Tax Code § 151.027(a)-(b). We understand you to represent that the submitted list was generated, in part, from records submitted by taxpayers pursuant to chapter 151 and examinations of the records of those taxpayers. Upon review, we find that because a list limited to tax refunds greater than \$50,000 encompasses such a large range of refund amounts, the responsive information does not reveal the refund amounts in or derived from

the records of any taxpayer, or secured, derived, or obtained during the examination of the records of any taxpayer. As such, we determine that the submitted information is not made confidential under section 151.027 of the Tax Code, and it may not be withheld under section 552.101 of the Government Code on that basis.

You also assert that the submitted information is confidential under section 552.101 of the Government Code in conjunction with section 171.206 of the Tax Code. Section 171.206 provides for the confidentiality of information collected under the Franchise Tax Act and provides as follows:

Except as provided by Section 171.207 of this code, the following information is confidential and may not be made open to public inspection:

- (1) information that is obtained from a record or other instrument that is required by [chapter 171 of the Tax code] to be filed with the comptroller; or
- (2) information, including information about the business affairs, operations, profits, losses, or expenditures of a corporation, obtained by an examination of the books and records, officers, or employees of a corporation on which a tax is imposed by this chapter.

Tax Code § 171.206. We understand you to represent that the submitted list was generated, in part, from records submitted by taxpayers pursuant to chapter 171 and examinations of the records of those taxpayers. Upon review, we find that because a list limited to tax refunds greater than \$50,000 encompasses such a large range of refund amounts, the responsive information does not reveal the refund amounts obtained from the records of any taxpayer or obtained by the examination of the records of any taxpayer. As such, we determine that the submitted information is not made confidential under section 171.206 of the Tax Code, and it may not be withheld under section 552.101 of the Government Code on that basis. As you raise no further arguments against disclosure, and the submitted information is not otherwise confidential by law, it must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Caroline E. Cho  
Assistant Attorney General  
Open Records Division

CEC/sdk

Ref: ID# 223505

Enc. Submitted documents

c: Mr. Michael Carlucci  
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(w/o enclosures)